

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

**FAIRMONT TALLAHASSEE, LLC, a
Florida limited liability company,**

Plaintiff,

vs.

Case No.

CITY OF TALLAHASSEE,

Defendant.

_____ /

VERIFIED COMPLAINT

Plaintiff, FAIRMONT TALLHASSEE (“Fairmont”), by and through its undersigned counsel, hereby sues Defendant, CITY OF TALLAHASSEE (the “City of Tallahassee”), and in support thereof states:

PARTIES, JURISDICTION, AND VENUE

1. The amount in controversy in this action exceeds \$15,000.00, exclusive of interest, costs, and attorneys’ fees.
2. Fairmont is a Florida limited liability company properly licensed and authorized to do business in Florida, with its principal place of business located in Tallahassee, Leon County, Florida.
3. At all relevant times hereto, the City of Tallahassee was a municipal corporation organized and existing under the laws of the State of Florida.
4. Venue properly lies in Leon County, Florida because the acts giving rise to this dispute occurred in Leon County, Florida.

GENERAL ALLEGATIONS

The Washington Square Project

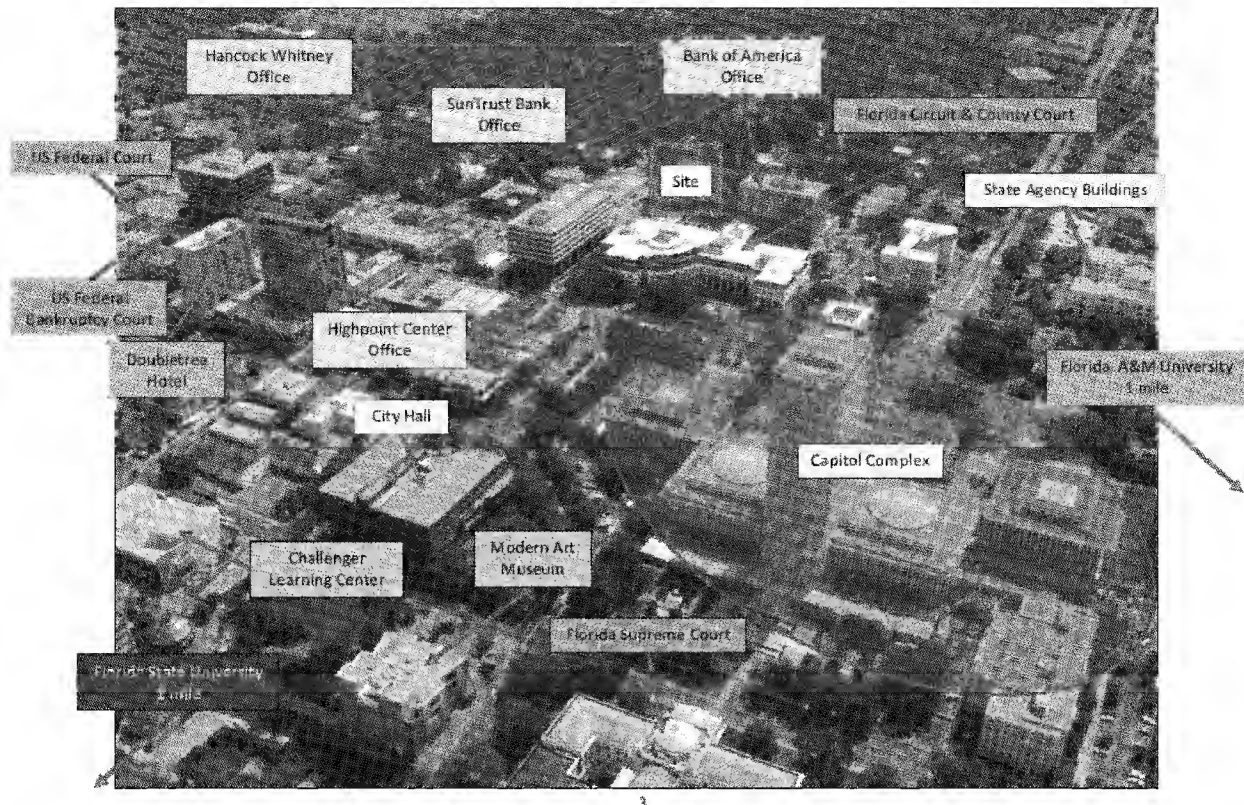
5. In 2007, Fairmont purchased five small office buildings that covered 1.3 acres in the center of the “Central Business District” of Tallahassee, Florida, representing half of a city block (the “Property”).

6. Following development feasibility and market research that began in 2015, Fairmont decided to construct a 19-story, mixed-use building that provided Class “A” office space, a full-service hotel, and a structured parking garage (collectively, the “Washington Square Project”) on the Property.

7. The Washington Square Project is designed to fulfill the growing need for additional office space and luxury hotels in Tallahassee by meeting the demand for hotel rooms during government, athletic, and other events in Tallahassee; providing additional meeting space; and offering approximately 85,000 square-feet of commercial Class A office space and approximately 2,900 square-feet of retail space to bolster transient hotel demand while encouraging Tallahassee’s economic vitality.

8. Fairmont’s Property is aptly situated, and within walking distance of the Circuit and County Court, the Capitol Complex, Florida Supreme Court and City Hall. An illustrative map is included below for reference, with “Site” denoting the location of the site of the Washington Square Project.

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9. Construction of the Washington Square Project commenced in August 2018 and is anticipated to open in September 2020.

The Eastside Garage

10. The half of the city block that is not owned by Fairmont—which borders the Washington Square Property on the north—is largely comprised of a parking garage owned by the City of Tallahassee (“Eastside Garage”). The space owned by the City of Tallahassee that is unencumbered by the Eastside Garage is a critical, undeveloped open space used by trucks to pull off Gadsden Street and back into the Eastside Garage. A demonstrative image¹ is included below

¹ For ease of reference, the blue and red shading have been superimposed onto the sketch depicting the metes and bounds prepared by Nobles Consulting Group, Inc. in support of the Easement more fully discussed below. An original copy of this sketch denoting the “Easement Area” is attached to the recorded Easement as “Exhibit A,” and attached and discussed below collectively as “Exhibit B.”

which includes blue shading to denote the areas covered by the Easement and not encumbered by the Eastside Garage. The portion of the Eastside Garage included in the Easement is shown in red. Together, these red and blue areas make up the “Easement Area” which was conveyed by the City of Tallahassee to Fairmont in the Easement, as further discussed herein. *See, e.g., infra* at ¶¶ 20–33.

[SPACE INTENTIONALLY LEFT BLANK]

11. The Eastside Garage is located at 215 South Calhoun Street, which, upon information and belief, consists of a six-level, 768-parking-space garage located upon 1.33 acres.

12. Upon information and belief, the City of Tallahassee acquired approximately 0.92 acres of the Eastside Garage (Parcel ID: 21-36-25-073-1255) in 2000 via Special Warranty Deed from Bank of America, N.A.

13. Upon information and belief, the remaining 0.41 acres of the Eastside Garage site is comprised of three lots in the northwest corner of the site, and leased to the City of Tallahassee through two long-term ground leases set to expire on June 25, 2025.

14. The Eastside Garage is predominately devoted to public parking either on a monthly lease basis, or as hourly parking.

15. In designing and developing the Washington Square Project, Fairmont sought to maximize the density of the Washington Square Project by seeking an easement from the City of Tallahassee that allowed it to perpetually use the space comprising the “other half” of the block—largely occupied by the then under-utilized first floor of the Eastside Garage.

16. Fairmont would use the Easement Area (as characterized above by the red and blue shaded areas) for its “back of house” operations that would include, among other things, employee parking, storage, deliveries, and waste disposal.

17. The first floor of the Eastside Garage could only be accessed from Gadsden Street and had no interior connections to the higher parking levels.

18. Of the 768 parking spaces in the Eastside Garage, 102 parking spaces were located on the first floor and reserved for monthly parking permit holders, though only 23 parking spaces were leased in early-2016.

19. At the time the easement was being discussed—in early 2016—Tallahassee’s Downtown Improvement Authority also occupied a portion of the first floor of the Eastside Garage for storage.

The Perpetual Easement

20. In deciding whether to construct the Washington Square Project, and then during the design phase, Fairmont worked extensively with the City of Tallahassee’s staff and Real Estate Committee to discuss an easement that would allow Fairmont utilize the Easement Area (denoted by red and blue, *supra*, p. 5), which was identified by Nobles Consulting Group, Inc. specifically in contemplation of the “Perpetual Ingress/Egress, Use and Parking Easement Agreement for a portion of the First Floor of the Eastside Parking Garage” (“Easement”).

21. Though titled as an easement for the “first floor” of the Eastside Parking Garage, the Easement contemplated, and ultimately granted, by the City of Tallahassee to Fairmont, includes 4,783 square feet of land that is **not** encumbered by the Eastside Garage. This area is comprised of a 24.5-feet by 170-feet strip along Gadsden Street; a 1.4-feet by 340-feet strip along the southern border of the City of Tallahassee’s land (bordering Fairmont’s property); and a 10-feet by 14.2-feet strip extending from the Eastside Garage to Calhoun Street. *See Image, supra* at p. 5 (as shown by the blue shading).

22. An easement for the Easement Area would allow for a more intensive use of the Washington Square Project providing additional tax revenues than would not otherwise be generated without Fairmont being able to rely on use of the City of Tallahassee’s half of the city block containing the Eastside Garage.

23. On March 22, 2016, the City of Tallahassee’s Real Estate Committee reviewed the Easement and “recommend[ed] approval of the [Easement]” at an April 13, 2016 City Commission

Meeting. A true and correct copy of the April 13, 2016 City Commission Agenda Item Details (“April 2016 Agenda”) is attached hereto as **Exhibit “A.”**

24. The City Attorney’s Office likewise reviewed the April 2016 Agenda “as to form and legality and concurs that [approval of the Easement does not] conflict with City Policy.” *Id.*

25. The April 2016 Agenda further states “[s]taff also recommend[ed] approval of the easement agreement in order to facilitate development, encourage economic vitality and improve the utilization and appearance of Eastside Garage,” citing as benefits to the City of Tallahassee: promotion of the use of a then under-utilized portion of the garage, increases in City of Tallahassee parking revenues, and reductions to City of Tallahassee operating and maintenance costs.

26. On May 24, 2016, the City of Tallahassee and Fairmont memorialized the Easement, by which the City of Tallahassee grants to Fairmont, among other things, “an exclusive, perpetual easement for ingress/egress, storage, use and parking purposes for the area described and depicted in the attached Exhibit ‘A’.” A true and correct copy of the Easement is attached hereto as **Exhibit “B.”**

27. The Easement acknowledges that “Fairmont desires to use a portion of the first floor of the Garage as described and depicted on the attached Exhibit “A” . . . for its benefit and in support of its proposed multi-use improvements to be known as Washington Square” *Id.* at p. 1 (referencing Exhibit A to the Easement).

28. The Easement itself expressly recognizes that the Easement “does not negatively impact the patrons of the Garage and the contemplated uses would encourage economic vitality of the area.” *Id.*

29. Pursuant to the terms of the Easement, Fairmont is “solely responsible for the security, utilities, maintenance and operating expenses associated with the [Eastside Garage]”; an

additional 13% of the overall common area maintenance expense; all improvements Fairmont agrees to undertake (which are approved by the City of Tallahassee in advance); and any damages that occurs to the Eastside Garage, as caused by Fairmont’s employees, contractors, and agents. Exh. B, ¶¶ 3–4, 7.

30. Paragraph 8 of the Easement in turn reiterates these responsibilities and again states that “Fairmont is solely responsible for all operations, enforcement, maintenance and repairs, replacements or installation relating to the access to or within [the Eastside Garage],” with the exception of capital improvement projects to the Eastside Garage—unless otherwise agreed to by Fairmont and the City of Tallahassee. *Id.*

31. Without indicating any term limits, Fairmont is also required to maintain various types of insurance with differing limits. *Id.* at ¶ 6.

32. The Easement was executed by Mayor Andrew Gillum on behalf of the City of Tallahassee; and its form was approved by Kristen L. Cooks, the Assistant City Attorney. *Id.*

33. In a separate Joinder and Consent, the Downtown Improvement Authority joined in the execution of the Easement “for purposes of indicating its consent thereto” A true and correct copy of the Joinder and Consent was attached and recorded as part of the Easement. *See* Exh. B.

34. In reliance on the perpetual nature of the Easement, Fairmont began the site excavation and construction of the self-funded Washington Square Project.

The City of Tallahassee’s Changed Position regarding the Easement

35. In 2017, the City of Tallahassee hired Rosenbaum Engineering, Inc. to assess the condition of the Eastside Garage and prepare a Structural Investigation and Evaluation Report containing its findings (the “Rosenbaum Report”). A true and correct copy of the March 21, 2018

City Commission Meeting Agenda Item Details discussing the Rosenbaum Report and recommending repairs to the Eastside Garage (“March 21, 2018 Agenda”) is attached hereto as

Exhibit “C.”

36. The Rosenbaum Report “indicated significant structural concerns, including some issues described as structurally critical, and included recommendation for repairs necessary to extend the life of the facility.” *Id.*

37. The Rosenbaum Report recommended an “expenditure of \$1,308,500 over the next two years to address the most critical and severe issues plus an additional \$2,491,500 (plus escalation and contingency factor) over a period of two decades,” with an additional recommendation to expend approximately \$400,000 of the \$1,308,500 “to assure the integrity and stability of the [Eastside Garage] before and during the Washington Square construction” *Id.*

38. Acting pursuant to the recommendations of the Rosenbaum Report, Judy Donahoe of the City of Tallahassee’s Real Estate Department recommended two courses of action during the March 21, 2018 City Commission Meeting: (1) direct staff to negotiate a purchase with the owners of the City of Tallahassee’s leased properties comprising of the Eastside Garage and expend approximately \$400,000 for immediate repairs; or (2) as an alternative, direct staff to negotiate 18-year leases for the City-occupied land comprising of the Eastside Garage and expend approximately \$400,000 for immediate repairs.

39. As discussed in the March 21, 2018 Agenda, several factors affect the future of the Eastside Garage, including the City of Tallahassee’s inability to demolish and rebuild the garage structure without the lessor’s permission or legal action. The City of Tallahassee also recognized its obligation to continue making ground lease payments through the term of the lease agreements,

regardless of the condition of the garage, which total \$1,219,185.79 from March 2018 through June 30, 2025.

40. The March 21, 2018 Agenda also discusses a possible public-private partnership with Fairmont through which Fairmont would reconstruct a new Eastside Garage concurrent with its construction of the Washington Square Project, “possibly being beneficial to both the City and Fairmont in terms of cooperative design and planning as well as shared construction, management and demolition.”

41. However, following the March 21, 2018 City Commission Meeting, Fairmont met with the attorney representing the ground-lease owners, who, contrary to the affirmations of the City of Tallahassee’s Real Estate Department, indicated that the City of Tallahassee never made an offer to purchase the leased properties comprising of the Eastside Garage. A true and correct email dated July 13, 2019 recounting this event is attached hereto as **Exhibit “D.”**

42. Upon learning that the City of Tallahassee never made formal offers to purchase the ground-lease parcels, Fairmont withdrew its interest in working with the City of Tallahassee to purchase the Eastside Garage. *Id.*

43. However, during this timeframe, Fairmont worked closely with the City of Tallahassee to discuss solutions for an ancillary glass openings issue for which the purchase of air-rights² was a possible solution, and the purchase of the Eastside Garage was another. As such, discussions for purchasing the Eastside Garage quickly resumed.

² More specifically, the purchase of air-rights was a proposed plan to resolve an ancillary issue of satisfying the building code without reducing the percentage of glass openings on the north side of the Washington Shores Property building. Given the expense of purchasing air-rights and negotiations, Fairmont opted to purchase fire-rated glass that resolved the issue without needing to purchase air-rights from the City of Tallahassee. The air-rights negotiations are not at issue in this litigation.

44. Under the guise of “clarifying” the terms of the Easement on September 25, 2018, the City Attorney sent Fairmont³ a letter stating:

When the garage is demolished (which could be as early as 2025 if the NW corner ground leases are not renewed) and Fairmont wishes to permanently encumber the first floor of a new parking garage, the City would agree to a shared use and access easement for both parties’ benefit and Fairmont will compensate the City based upon a fair market value appraisal at the time of the easement execution. If however, the City decides not to rebuild and sell the site as a vacant land for development, and affirmative duty of the City to negotiate an easement with Fairmont for a future garage will not exist.

A true and correct copy of the September 25, 2018 Letter (the “Letter”) is attached hereto as

Exhibit “E.”

45. This Letter dated September 25, 2018 (sent after construction for the Washington Square Project had already began) indicated that the City of Tallahassee had materially changed its position to interpret the Easement—not as a perpetual easement, but apparently, only as a “perpetual” Easement for the lifetime of the Eastside Garage.

46. Following receipt of that letter, Fairmont, represented by Ms. Barron, met with the City Attorney and City of Tallahassee staff to discuss the purchase of air-rights and the Garage Easement on October 28, 2018 (“October 2018 Meeting”).

47. At the October 2018 Meeting, the City Attorney stated ‘it was not the intent’ of the City Commission to provide Fairmont a perpetual easement, because the City Commission would otherwise have charged Fairmont a substantial amount of money for it.

³ At the time the Letter was sent, Fairmont was represented by Elizabeth Barron of Ausley McMullen. Shortly after a contentious meeting between Fairmont and the City of Tallahassee (*see discussion infra*, at ¶¶ 45–47), Ms. Barron suggested Fairmont seek new representation as Ausley McMullen also represented the City of Tallahassee. A true and correct copy of an email dated November 2, 2018 referencing that conversation is attached hereto as **Exhibit “F.”**

48. The Easement issue was not resolved at the October 2018 Meeting, but for the next few months, Fairmont, in good faith, worked with the City of Tallahassee to purchase air rights and resolve the Easement issue.

49. Concurrently, and recognizing that there may be delays to the Washington Square Project, Fairmont was in talks with an investor to seek additional construction financing.

50. Around the end of 2018, and in anticipation of the Washington Square Project, Fairmont replaced an existing City of Tallahassee sewage line that was too small and outdated for the needs of the City of Tallahassee.

51. The sewage line replacement cost Fairmont approximately \$400,000.00 which, to date, the City of Tallahassee has not reimbursed Fairmont for its expenses.

52. On May 3, 2019, Fairmont submitted for a building permit to construct a loading/receiving dock in the Eastside Garage (“Garage Permit”), which was conditioned upon obtaining approval from the City of Tallahassee’s Real Estate Department.

53. On July 9, 2019, Judy Donahoe of the City of Tallahassee’s Real Estate Department indicated that the Real Estate Department would be approving the plans for the Garage Permit, but simultaneously dredged up what Fairmont considered to be a settled issue at that time, specifically language indicating that “[t]he City’s intention when entering into the easement was that the term ‘perpetual’ is defined by the specific location within the first floor of the Eastside garage . . . and the easement would extinguish if that first floor of the garage is removed.” A true and correct copy of this July 9, 2019 email is attached hereto as **Exhibit “G.”**

54. No longer able to rely on the clear language of the Easement or finalize its Construction Financing, the Washington Square Project is currently stalled with two 300-foot tower cranes and equipment standing idle.

55. Fairmont's damages, as caused solely by the City of Tallahassee's changed position towards the Easement includes, but not limited to, the following:

- More than \$24,000 each day to maintain the equipment and personnel;
- Anticipated monthly loss in net operating income, currently calculated to be a minimum of \$737,000 per month;
- Delays to the construction and completion of the Washington Square Project;
- Scheduling and coordination changes to the Washington Square Project;
- Ability to finalize Construction Financing;
- Lost investor funding;
- A currently-anticipated \$5 mil. to \$8 mil. of additional development costs;
- Delays to signing leases by future tenants at the Washington Square Project;
- Possible loss of future tenants at the Washington Square Project;
- Possible re-design and re-/de-construction of the Washington Square Project to exclude reliance on the Eastside Garage; and
- Possible abandonment of the Washington Square Project if it proves to be economically unviable.

56. To date, Fairmont has spent approximately \$19 million on the Washington Square Project, and an additional approximately \$4.4 million to purchase the land.

57. Fairmont will, at the very least, also incur difficult-, if not impossible-, to-calculate monetary damages if the Washington Square Project is abandoned, which is a virtual certainty if delays continue.

58. In granting the Easement to Fairmont, the City of Tallahassee entered into an express contract with Fairmont thereby waiving sovereign immunity.

59. Fairmont has retained the law firm of Foley & Lardner LLP to represent it in connection with this matter. Pursuant to the terms of the engagement, Fairmont is obligated to pay Foley & Lardner LLP a reasonable fee for services rendered in connection with this matter.

60. All conditions precedent to bringing this action have occurred, have been satisfied, or have been effectively waived.

COUNT I **DECLARATORY JUDGMENT**

61. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

62. This is an action for declaratory judgment and supplemental relief filed pursuant to Section 86.011, Florida Statutes, *et seq.*

63. There is a present, actual, and bona fide dispute between Fairmont and the City of Tallahassee regarding whether the Easement is, as it clearly states, “perpetual.”

64. After granting the **perpetual** Easement to Fairmont, the City of Tallahassee now maintains that the Easement “would extinguish if that first floor of the [Eastside Garage] is removed.” *See* Exh. G (July 9 Email).

65. Following countless attempts at working with the City of Tallahassee in crafting a solution, Fairmont has been unable to resolve this issue without the assistance of the Court.

66. At present, Fairmont’s construction of the Washington Square Project has ceased as the interpretation of this Easement decides the future of the Washington Square Project and its funding.

67. One immediate concern for this Washington Square Project—as caused by the City of Tallahassee’s interpretation of the Easement—is the withdrawal of investors and lenders who will not want to invest in a property that may become unsustainable in as early as six years.

68. If the Washington Square Project is constructed as designed, the issue then becomes whether there will be a place for employee parking, storage, deliveries, and waste disposal when the Eastside Garage ceases to exist. There is currently no viable alternative solution, as the perpetual Easement has always been the only solution contemplated by Fairmont and the City of Tallahassee.

69. The instant action involves a present, ascertained or ascertainable doubt concerning Fairmont’s rights under the Easement, which arise from a question of construction from which Fairmont is entitled to obtain a declaration of rights, status, or other equitable or legal relations.

70. The parties are entitled to have this doubt resolved and adjudicated by this Court.

71. Each party having an actual, present, adverse and antagonistic interest in the subject matter hereof is properly joined in this action.

72. The relief requested herein is not pursued theoretically or out of curiosity.

73. Because of the conflicting claims of the parties, irreparable damage may be done unless the rights of the parties under the Easement are determined promptly as Fairmont is extremely burdened by the extraordinary cost of delaying construction without knowing if construction will continue.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a declaratory judgment finding that: (i) “perpetual,” as used in the Easement, is not anchored to the lifespan of the Eastside Garage; (ii) “perpetual,” as used in the Easement, is a derivative of “in perpetuity,” such that the “exclusive, perpetual easement” granted

to Fairmont by the City of Tallahassee was granted to Fairmont in perpetuity—regardless of whether the physical Eastside Garage exists; (iii) the references to the “garage” in the Legal Description attached to the Easement describes those portions of the Easement Area on which the Eastside Garage is situated, but does not limit the Easement to those exact constructs, as the sketch and Legal Description contains undeveloped land conveyed by the Easement, which extends beyond the Eastside Garage; (iv) the references to the “first floor” of the Eastside Garage describes Fairmont’s current permitted use of the dominant estate—while the Eastside Garage is in existence; (v) the Easement that the City of Tallahassee granted to Fairmont does not terminate when the Eastside Garage is demolished, converted, or otherwise abandoned by the City of Tallahassee; (vi) injunctive relief is proper; and (vii) any other remedy or finding that this Court deems just and equitable.

COUNT II
BREACH OF EASEMENT

74. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

75. This is an action for money damages and other relief with a value in excess of \$15,000.00, exclusive of costs and interest.

76. By publicly disputing the perpetual nature of the Easement, and by conditioning the Easement to the longevity of the deteriorating Eastside Garage, the City of Tallahassee has breached the Easement it granted to Fairmont.

77. The City of Tallahassee’s breach of the Easement has caused, and will continue to cause, Fairmont damages as Fairmont is no longer able to proceed with the Washington Square Project since it will no longer be able to utilize the space provided for in the Easement in as early as six years.

78. The approximately \$4.4 million Fairmont spent on purchasing the land and the approximately \$19 million it spent on developing the Washington Square Project thus far, will be rendered useless.

79. Not only were the plans for the Washington Square Project designed to incorporate and utilize the perpetual benefits of the Easement, but the profitability of the Washington Square Project was contingent upon being able to indefinitely utilize the additional parking space, the loading/receiving dock, the trash compactor, and other benefits provided by the Easement Area.

80. In learning of the City of Tallahassee's breach, Fairmont could no longer work on the Washington Square Project as the long-term viability of the project has been called into question by the City of Tallahassee's actions.

81. Thus far, the damages Fairmont has incurred, as caused solely by the City of Tallahassee's change in position towards the Easement includes, but is not limited to, the following:

- More than \$24,000 **each day** to maintain the equipment and personnel;
- Anticipated monthly loss in net operating income, currently calculated to be a minimum of \$737,000 per month;
- Delays to the construction and completion of the Washington Square Project;
- Scheduling and coordination changes to the Washington Square Project;
- Ability to finalize Construction Financing;
- Lost investor funding;
- A currently-anticipated \$5 million to \$8 million of additional development costs;

- Delays to signing leases by future tenants at the Washington Square Project;
- Possible loss of future tenants at the Washington Square Project;
- Possible re-design and re-/de-construction of the Washington Square Project to exclude reliance on the Eastside Garage; and
- Possible abandonment of the Washington Square Project if it proves to be economically unviable.

82. Pursuant to the terms of the Easement, Fairmont was performing in accordance with all terms of the Easement at the time the City of Tallahassee breached the Easement, including, but not limited to paying a portion of the maintenance expenses of the Eastside Garage; agreeing to undertake improvements to the Eastside Garage; maintaining the requisite insurance; and repairing and replacing all damages caused by Fairmont in the Eastside Garage.

83. All conditions precedent to bringing this action have occurred, have been satisfied, or have been effectively waived.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a final judgment in its favor and against Defendant, CITY OF TALLAHASSEE, awarding it all damages in excess of \$15,000.00 plus costs, interests allowable by law, and all other and further relief as this Court deems just and equitable.

COUNT III **ANTICIPATORY BREACH OF EASEMENT**

84. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

85. This is an alternative action for money damages and other relief with a value in excess of \$15,000.00, exclusive of costs and interest.

86. The City of Tallahassee breached the Easement by clearly and positively indicating, by emails sent to Fairmont by the Real Estate Department and Legal Department, and at meetings, more clearly described above, that it would not honor the terms of the Easement and keep “exclusively” and “perpetually” open the area “for ingress/egress, storage, use and parking purposes.” *See* Exh. B.

87. Pursuant to the terms of the Easement, Fairmont was performing in accordance with all terms of the Easement at the time the City of Tallahassee breached the Easement, including, but not limited to paying a portion of the maintenance expenses of the Eastside Garage; agreeing to undertake improvements to the Eastside Garage; maintaining the requisite insurance; and repairing and replacing all damages caused by Fairmont in the Eastside Garage. *Id.*

88. All conditions precedent to bringing this action have occurred, have been satisfied, or have been effectively waived.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a final judgment in its favor and against Defendant, CITY OF TALLAHASSEE, awarding it all damages in excess of \$15,000.00 plus costs, interests allowable by law, and all other and further relief as this Court deems just and equitable.

COUNT IV INVERSE CONDEMNATION

89. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

90. This is an alternative action for money damages and other relief with a value in excess of \$15,000.00, exclusive of costs and interest.

91. Fairmont’s decision to develop the Washington Square Project was contingent on the Easement the City of Tallahassee granted Fairmont, as it provided Fairmont “an exclusive, perpetual easement for ingress/egress, storage, use and parking purposes” for the Easement Area.

92. When the City of Tallahassee asserted its changed position—that Fairmont’s “exclusive and perpetual” use of the Easement Area would be terminated in as early as six years from the present—Fairmont’s perpetual interest in the space occupied by the Easement Area was *de facto* taken by the City of Tallahassee.

93. The City of Tallahassee’s taking occurred on July 9, 2019, when it expressly conveyed its position to Fairmont via email that the duration of the Easement would not extend beyond the lifespan of the Eastside Garage. *See* Exh. G.

94. The design of the Washington Square Project relies on Fairmont’s ability to use the Easement Area to provide “back-of-house” support for the hotel, restaurants, and offices of the Washington Square Project, including, but not limited to, providing access to the loading/receiving dock, trash compactor, and storage.

95. Fairmont’s inability to “perpetually” access and utilize Easement Area in as early as six years completely terminates its ability to operate the hotel, restaurants, and offices of the Washington Square Project.

96. Since the Washington Square Project is being constructed and is funded in part by investors, the City of Tallahassee’s condemnation of the perpetual duration of the Easement Area has caused a loss of funding and negatively impacted Fairmont’s ability to finalize construction financing for the Washington Square Project, as investors are unwilling to fund a project that will be rendered inoperable when access to the Easement is precluded by the City of Tallahassee.

97. Assuming Fairmont could obtain construction financing to complete the construction of the Washington Square Project, which realistically it could not accomplish after disclosing the Easement situation to investors, the shortened duration of the Easement will still render the Washington Square Project valueless when the tenants and property management are no longer able to functionally operate the Washington Square Project.

98. Based on the location of the Washington Square Project and Easement Area, there is no alternative location that would provide Fairmont access to these facilities/services that are necessary to operating the Washington Square Project.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a final judgment in its favor and against Defendant, CITY OF TALLAHASSEE, awarding it the value of the taken property, including the Easement, plus costs, interests allowable by law, and all other and further relief as this Court deems just and equitable.

COUNT V FRAUD IN THE INDUCMENT

99. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

100. This is an alternative action for money damages and other relief with a value in excess of \$15,000.00, exclusive of costs and interest.

101. The City of Tallahassee repeatedly told Fairmont that it would be granting Fairmont a perpetual easement for use of the Easement Area, citing as benefits to the City of Tallahassee the facilitation of development and encouragement of the economic vitality of the area, promotion of the use of a currently under-utilized portion of the Eastside Garage, increases to parking revenues, and reductions to the City of Tallahassee’s operating and maintenance costs. *See* Exh. A.

102. Following direct discussions between Fairmont and City of Tallahassee staff, the City Attorney, and City Real Estate Department—all of which stated the Easement would be perpetual—the Easement was granted to Fairmont, expressly stating that the Easement is “an exclusive, perpetual easement for ingress/egress, storage, use and parking purposes. . . .”

103. The City of Tallahassee knew that the Easement was not going to be given to Fairmont in perpetuity when it told Fairmont that it would be.

104. The City of Tallahassee’s intent of making the false statement was to induce Fairmont to invest in, and construct, the Washington Square Project.

105. Fairmont, in reliance on the City of Tallahassee’s representation that the Easement would be perpetual, was injured.

106. The approximately \$4.4 million Fairmont spent on purchasing the land and the approximately \$19 million it spent on developing the Washington Square Project thus far, will have been wasted and the Washington Square Project will be rendered valueless.

107. Fairmont’s damages further includes, but not limited to, the following:

- More than \$24,000 each day to maintain the equipment and personnel;
- Anticipated monthly loss in net operating income, currently calculated to be a minimum of \$737,000 per month;
- Delays to the construction and completion of the Washington Square Project;
- Scheduling and coordination changes to the Washington Square Project;
- Ability to finalize Construction Financing;
- Lost investor funding;

- A currently-anticipated \$5 million to \$8 million of additional development costs;
- Delays to signing leases by future tenants at the Washington Square Project;
- Possible loss of future tenants at the Washington Square Project;
- Possible re-design and re-/de-construction of the Washington Square Project to exclude reliance on the Eastside Garage; and
- Possible abandonment of the Washington Square Project if it proves to be economically unviable.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a final judgment in its favor and against Defendant, CITY OF TALLAHASSEE, awarding it all damages in excess of \$15,000.00 plus costs, interests allowable by law, and all other and further relief as this Court deems just and equitable.

COUNT VI TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

108. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

109. This is a claim for temporary and permanent injunctive relief against the City of Tallahassee.

110. Injunctive relief is proper because while the clear language of the Easement and the City of Tallahassee’s urgings have always indicated that the Easement was “perpetual,” the City of Tallahassee’s sudden change of position has cause Fairmont to not be able to rely on the clear language of the Easement or to finalize construction financing, which in turn is stopping construction of Washington Square Project and rendering its future uncertain.

111. Specifically, Fairmont seeks to (1) enjoin the City of Tallahassee from interfering with Fairmont's quiet enjoyment of the perpetual Easement; (2) require the City to rescind its emails/statements purporting to limit the duration of the easement; and (3) require the City to publically acknowledge the perpetual nature of the Easement.

112. Fairmont has suffered and will continue to suffer irreparable harm absent injunctive relief, as it risks damaging its reputation in the community such that investors will withdraw, and losing its quiet enjoyment of the perpetual Easement, both of which cannot be compensated by monetary damages.

113. Fairmont has a substantial likelihood of success on the merits because the City of Tallahassee's newfound position is directly contradicted by the language of the Easement.

114. Fairmont has no adequate remedy at law to prevent the City of Tallahassee from continuing to disavow the perpetual nature of the Easement and interfering with its quiet enjoyment of its Easement.

115. The interest of the public will be well-served by the entry of an injunction. The public needs to believe that its government will honor its contract and not seek to disavow them on a whim or at its convenience.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC, respectfully requests that this Court enter a temporary and permanent injunction: (1) enjoining the City of Tallahassee from interfering with Fairmont's quiet enjoyment of the perpetual Easement; (2) requiring the City to rescind its emails/statements limiting the duration of the Easement; and (3) requiring the City publically acknowledge the perpetual nature of the Easement; and granting such other and further relief as this Court deems just, equitable, and proper under the circumstances.

COUNT VII
SPECIFIC PERFORMANCE

116. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

117. This is an alternative equitable action for specific performance of the Easement entered into on May 24, 2016.

118. The Easement is a binding contract between Fairmont and the City of Tallahassee, allowing Fairmont to use the Easement Area for “back of house” services for the Washington Square Project.

119. Fairmont has and continues to uphold its obligations under the Easement, which includes, among other things, maintaining the appropriate amounts of insurance and agreeing to pay for damage caused by its employees and agents.

120. Fairmont has been, and remains, ready, willing, and able to continue performing all of its obligations under the Easement.

121. The City of Tallahassee has refused to perform its obligations of honoring the Easement which grants Fairmont use of the Easement Area in perpetuity.

122. Fairmont is without an adequate remedy at law because the space provided for in the Easement is unique and cannot be replaced.

123. Fairmont has unique rights of quiet enjoyment and perpetual use of the space in the Easement, which the Tallahassee has violated by terminating the perpetuity of the Easement, which will leave Fairmont without options for its “back of house” operations in as early as six years from the present.

WHEREFORE, Fairmont respectfully requests that this Court enter an Order specifically enforcing the Easement granted by the City of Tallahassee by ordering that the Easement was

granted in perpetuity to Fairmont, awarding injunctive relief, costs, and granting all further relief deemed just and proper.

COUNT VIII UNJUST ENRICHMENT

124. The allegations of Paragraphs 1 through 60 of this Complaint are realleged and incorporated for this Cause of Action.

125. This is an alternative equitable action for damages exceeding \$15,000.00 exclusive of costs or interest.

126. At the time Fairmont and the City of Tallahassee entered into the Easement, the City of Tallahassee was fully aware that Fairmont would perform necessary improvements for maintaining the Eastside Garage, as well as operating and maintenance costs of the Eastside Garage that may be assessed.

127. The City of Tallahassee knew that Fairmont undertook such actions with the expectation of using the space provided for in the Easement for its “back of house” operations once the Washington Square Property was constructed.

128. Fairmont has performed all necessary obligations under the Easement, including the replacement of a City of Tallahassee sewage line that cost approximately \$400,000.00.

129. The City of Tallahassee received a substantial benefit from Fairmont’s actions, yet has not paid Fairmont for the benefit received.

130. Under the circumstances, it would be unfair and inequitable to allow the City of Tallahassee to retain the benefit of Fairmont’s actions without compensating Fairmont therefore.

WHEREFORE, Plaintiff, FAIRMONT TALLAHASSEE, LLC (“Fairmont”), respectfully requests this Court enter a final judgment in its favor and against Defendant, CITY OF

TALLAHASSEE, awarding it all damages in excess of \$15,000.00 plus costs, interests allowable by law, and all other and further relief as this Court deems just and equitable.

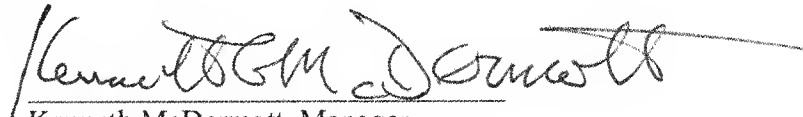
DEMAND FOR JURY TRIAL

FAIRMONT TALLAHASSEE, LLC demands trial by jury of all issues so triable as a matter of right.

VERIFICATION

I, Kenneth McDermott, Manager of Fairmont Tallahassee, LLC, have reviewed the contents of this Verified Complaint and verify that all facts are accurate to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

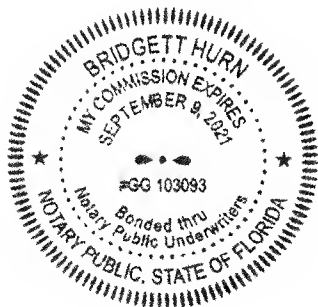

Kenneth McDermott, Manager
FAIRMONT TALLAHASSEE, LLC

STATE OF FLORIDA :

COUNTY OF LEON :

NOTARY CERTIFICATE

The foregoing Affidavit was acknowledged before me this 31st day of July, 2019, by Kenneth McDermott, who is personally known to me or who has produced Driver's License as identification and who did/did not take an oath.



NOTARY PUBLIC

Sign: Bridgett Hurn

Print: Bridgett Hurn

My commission expires:

Dated this 1st day of August, 2019.

/s/ Michael Gay

Michael Gay

FL Bar No: 0938191

Primary Email: mgay@foley.com

Secondary Email: sscott@foley.com

FOLEY & LARDNER LLP

111 North Orange Ave., Suite 1800

Orlando, Florida 32801

Telephone: 407.423.7656

Facsimile: 407.648.1743

Attorneys for Fairmont Tallahassee, LLC



Agenda Item Details

Meeting	Apr 13, 2016 - City Commission Meeting & Summary
Category	13. POLICY FORMATION AND DIRECTION
Subject	13.02 Approval of Proposed Easement Agreement between the City of Tallahassee and Fairmont Tallahassee, LLC, for the First Floor of the Eastside Parking Garage – Judy Donahoe, Real Estate Management
Type	Action, Discussion
Fiscal Impact	No
Budget Source	There is no fiscal cost associated with this agenda item. However, this partnership allows greater intensity on the Fairmont parcel which will provide additional tax revenues. Additionally, the proposed uses on the Fairmont parcel should provide increased parking revenues for the Eastside Garage as the garage will be utilized to a greater extent.
Recommended Action	Option 1: Approve acceptance of the Perpetual Ingress/Egress, Use and Parking Easement Agreement for the first floor of the Eastside Garage between the City of Tallahassee and Fairmont Tallahassee, LLC.

For more information, please contact: Judy Donahoe at 850-891-8524.

Statement of Issue

This item requests City Commission consideration for the approval of a proposed easement agreement between the City of Tallahassee and Fairmont Tallahassee, LLC, ("Fairmont") for the first floor of the Eastside Parking Garage. The first floor of the Eastside Garage is accessed from South Gadsden Street.

The Real Estate Committee reviewed the easement agreement on March 22, 2016 and recommends approval of agreement. Staff also recommends approval of the easement agreement in order to facilitate development, encourage economic vitality and improve the utilization and appearance of Eastside Garage.

Recommended Action

Option 1: Approve acceptance of the Perpetual Ingress/Egress, Use and Parking Easement Agreement for the first floor of the Eastside Garage between the City of Tallahassee and Fairmont.

Fiscal Impact

There is a positive fiscal impact associated with this agenda item. This City/private partnership will allow for a more intensive use on the Fairmont parcel providing additional tax revenues than would otherwise be generated without the shared use facility. Additionally, due to the proposed increased development and type of development adjacent to this parking structure, it is expected that evening and weekend parking revenues will increase over time. Lastly, it is anticipated that the City's operating costs of the parking facility will be reduced by approximately \$25,000 - \$30,000 per year as Fairmont will maintain that portion of the facility related to their use. The City Attorney's Office has reviewed this agenda item as to form and legality and concurs that there is no conflict with City policy.

Supplemental Material/Issue Analysis

History/Facts & Issues

The City's Eastside Parking Garage is located at 215 South Calhoun Street and consists of 768 parking spaces divided among six parking levels.

Fairmont owns the one-half block located adjacent to the south of the Eastside Garage and is undertaking a development of its parcel. This development, known as Washington Square, will consist of a mixed use building containing office, retail, hotel and residential uses, which will complement uses in the downtown area.

In order to achieve their desired intensity, Fairmont desires to acquire a Perpetual Ingress/Egress, Use and Parking Easement Agreement over the first floor of the Eastside Garage. The garage is owned in fee by City. In exchange, Fairmont agrees to be solely responsible for the maintenance and expenses associated with the areas encumbered by the easement, 13 percent of the Eastside Garage's overall common area maintenance expenses (i.e. landscaping, exterior façade and sidewalk cleaning) and undertake improvements to the Eastside Garage that will include, but are not limited to, façade, entrance and landscaping improvements.

Fairmont intends to use the first floor of the Eastside Garage for its "back of house" operations that will include employee parking, storage, deliveries, waste disposal, etc.

The first floor of the Eastside Garage can only be accessed from Gadsden Street and has no interior connections to the higher parking levels. The 102 parking spaces on the first floor of the garage are currently reserved for monthly parking permit holders. However, only 23 of these parking spaces are currently leased. Arrangements to move these parkers to upper floors will be undertaken so that no parkers are displaced.

As this portion of the Eastside Garage is under-utilized and the City has no present or contemplated future use for this portion of the first floor, Real Estate Management staff and the Real Estate Committee recommend the granting of this easement to facilitate development and encourage the economic vitality of the area as a prudent business decision. The Downtown Improvement Authority ("DIA") has been consulted and is in agreement with the granting of the easement. The DIA is using a portion of the first floor for storage and Fairmont has agreed to allow that use to continue.

Options

1. Approve acceptance of the Perpetual Ingress/Egress, Use and Parking Easement Agreement for the First Floor of the Eastside Garage between the City of Tallahassee and Fairmont.

Pros:

- Facilitates development and encourages the economic vitality of the area.
- Promotes the use of a currently under-utilized portion of the garage.
- Increases City parking revenues.
- Reduces City operating and maintenance costs.

Cons:

- Loss of potential parking revenue on the first floor of the garage.

2. Do not approve acceptance of the Perpetual Ingress/Egress, Use and Parking Easement Agreement for the First Floor of the Eastside Garage between the City of Tallahassee and Fairmont and provide alternative direction to staff.

Pros:

- No loss of potential parking revenue on the first floor of the garage.

Cons:

- Does not facilitate development or encourage the economic vitality of the area.
- Does not promote the use of a currently under-utilized portion of the garage.

Attachments/References

1. Location Map
2. Agreement
3. PowerPoint Presentation

Aerial Map, EASTSIDE PARKING GARAGE_City Ownership.pdf (292 KB)

Eastside Easement Agreement.pdf (376 KB)

Attach 3-PowerPoint Presentation.pdf (2,158 KB)

**PERPETUAL INGRESS/EGRESS, USE AND PARKING EASEMENT AGREEMENT FOR
THE FIRST FLOOR OF THE EASTSIDE PARKING GARAGE**

This Agreement is entered into this 24th day of May, 2016 ("Effective Date") by and between **Fairmont Tallahassee, LLC**, a Florida limited liability company ("Fairmont") whose address is 123 S. Calhoun Street, Tallahassee, Florida 32301-1517 and the **CITY OF TALLAHASSEE**, a Florida municipal corporation, ("City"), whose address is 300 South Adams Street, Tallahassee, Florida 32301.

WITNESSETH:

WHEREAS, the City owns that certain real property as describe Representatives Deed, Quit Claim Deed and Special Warranty Deed, 1 Book 2895, at Page 216, Official Records Book 2895, at Page 219 and at Page 708, respectively, of Leon County, Florida; and,

20160034632
THIS DOCUMENT HAS BEEN
RECORDED IN THE PUBLIC RECORDS
OF
LEON COUNTY FL
BK: 4932 PG:931, Page 1 of 6
05/26/2016 at 02:15 PM,
DOCUMENTARY TAX PD \$0.70
BOB INZER, CLERK OF COURTS

WHEREAS, the Property is improved with a six-level parking garage, Eastside Parking Garage ("Garage"); and,

WHEREAS, Fairmont desires to use a portion of the first floor of the Garage as described and depicted on the attached Exhibit "A" ("Property") for its benefit and in support of its proposed multi-use improvements to be known as Washington Square and proposed to be constructed on tax parcel #21-36-25-071-1210; and,

WHEREAS, this Agreement does not negatively impact patrons of the Garage and the contemplated uses would encourage economic vitality of the area; and,

WHEREAS, the City desires to permit Fairmont to utilize the Property subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto have agreed to the following:

1. The City grants to Fairmont an exclusive, perpetual easement for ingress/egress, storage, use and parking purposes for the area described and depicted in the attached Exhibit "A".
2. The City and Fairmont understand and agree that the Downtown Improvement Authority ("DIA") utilizes areas of the Garage for storage that are not included in the area encumbered by the Property. A right of entry across the Property is retained by the City and granted to the DIA to access and transport their stored materials.
3. The City and Fairmont agree that Fairmont is solely responsible for the security, utilities, maintenance and operating expenses associated with the Property. Fairmont is further responsible for 13% of the overall common area maintenance expenses of the Garage. Common area maintenance expenses shall be limited to Garage landscaping, exterior façade cleaning and sidewalk cleaning. The City shall invoice Fairmont on a quarterly basis for the shared common area expenses.

4. Fairmont agrees to undertake improvements to the Garage, as determined by Fairmont, that will include, but are not limited to: façade, entrance, and landscaping improvements in areas adjacent to the Property. All said improvements will be approved in writing by the City prior to initiation of the contemplated improvements and the City's approval will not be unreasonably withheld.
5. Fairmont agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents and employees from any and against any and all damages, actions, costs, claims, losses and/or expenses, sustained by the City attributable to the acts, omissions or negligence of Fairmont or any of its agents, employees, directors, officials, contractors, subcontractors, guests, licensees and invitees from any cause, including, without limitation by specification, property damage and/or injury or death to any person or persons within the Property boundary.
6. Fairmont shall maintain insurance on the Property in the following coverages and amounts: Commercial General Liability \$1,000,000 combined single limit each occurrence for bodily injury and property damage (which shall include coverage for dishonest acts of Manager, employees and agents); Umbrella Excess Coverage \$5,000,000; Garage Keepers Legal Liability \$1,000,000; Worker's Compensation Coverage "A" - statutory and "B" - \$100,000; Crime \$10,000.
7. Fairmont shall be responsible for the repair and replacement for any and all damages that may occur to the Garage if the actions of Fairmont's employees, contractors and agents are determined to be at fault by mutual agreement of the parties, mediation or in a court of law.
8. Fairmont is solely responsible for all operations, enforcement, maintenance, repairs, replacements or installation relating to the access to or within the Property. This does not include responsibly for capital improvements to the Garage unless otherwise agreed to by Fairmont and the City.
9. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors or assigns in interest. Notwithstanding the foregoing, no Party may assign its rights under this Agreement by operation of law or otherwise without the prior written consent of all other Parties and such consent will not be unreasonably withheld.
10. Violation of the terms of this Agreement may result in the revocation of this Agreement in part or in whole by the other party. In the event of a violation, a Party shall give thirty (30) days written notice of its intent to revoke any term of the agreement. Notwithstanding, any violation of the Agreement may be cured within sixty (60) days of receipt of written notice.
11. If Fairmont, their successors in interest or assigns, abandon the Property, then this Agreement shall terminate.
12. The City shall have the right to enter and inspect the Property at all times.

Rest of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date by and through their respective duly authorized representatives.

WITNESSES:

Donna L. Moss

Kathleen McDermott

FAIRMONT TALLAHASSEE, LLC
a Florida limited liability company

Kenneth McDermott
Kenneth McDermott, Manager

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 22 day of April, 2016, by Kenneth McDermott as Manager of Fairmont Tallahassee, LLC, a foreign limited liability company. He is personally known to me or has produced a driver's license as identification.



DONNA L. MOSS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF223586
Expires 6/14/2019

Donna L. Moss

Notary Public

State of Florida

My commission number: FF 22 3586

Expires: 6/14/2019

WITNESSES:

[Signature]

[Signature]

CITY OF TALLAHASSEE, a Florida
Municipal corporation.

Andrew D. Gillum

By: Andrew D. Gillum

As Its: Mayor

APPROVED AS TO FORM:

Kristen L. Coons

Kristen L. Coons
Assistant City Attorney

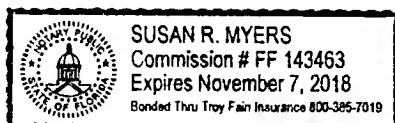
ATTEST:

James O. Cooke, IV

James O. Cooke, IV
City Treasurer-Clerk

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 24 day of May, 2016, by Andrew D. Gillum, who is well known to me to be the Mayor of the City of Tallahassee, Florida.



SUSAN R. MYERS
Commission # FF 143463
Expires November 7, 2018
Bonded Thru Troy Fair Insurance 800-385-7019

Susan R. Myers

Notary Public

State of Florida

My commission number:

Expires: 11-7-18

THIS INSTRUMENT PREPARED BY:
Judy Donahoe, Real Estate Manager
City of Tallahassee/City Hall
Real Estate Management, Box A-15
300 S. Adams Street, 4th Floor
Tallahassee, Florida 32301
Tax ID #: a portion of 21-36-25-071-1210

Leave blank for official recording.

JOINDER AND CONSENT

PERPETUAL INGRESS/EGRESS, USE AND PARKING EASEMENT AGREEMENT FOR THE FIRST FLOOR OF THE EASTSIDE PARKING GARAGE

The Tallahassee Downtown Improvement Authority, by and through its undersigned officer, does hereby join in the execution of the Perpetual Ingress/Egress, Use and Parking Agreement between the City of Tallahassee, a Florida municipal corporation and Fairmont Tallahassee, LLC, a Florida limited liability corporation, for the First Floor of the Eastside Parking Garage for purposes of indicating its consent thereto, this 18th day of April, 2016.

Signed, sealed and delivered in the presence of:

TALLAHASSEE DOWNTOWN
IMPROVEMENT AUTHORITY

BY: W. Allen Thompson
Allen Thompson

As Its: Interim Executive Director

1st Witness Signature

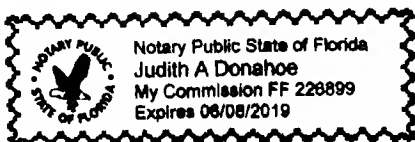
Print 1st Name

2nd Witness Signature

Print 2nd Name

STATE OF _____
COUNTY OF _____

THE FOREGOING instrument was acknowledged before me this 18th day of April, 2016 by Allen Thompson, as Interim Executive Director of the Tallahassee Downtown Improvement Authority, who is personally known to me, or who has produced _____ (type of identification) as identification.



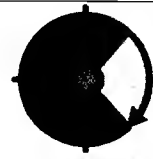
NOTARY PUBLIC State of Florida at Large

Print Notary Name

My Commission Expires:

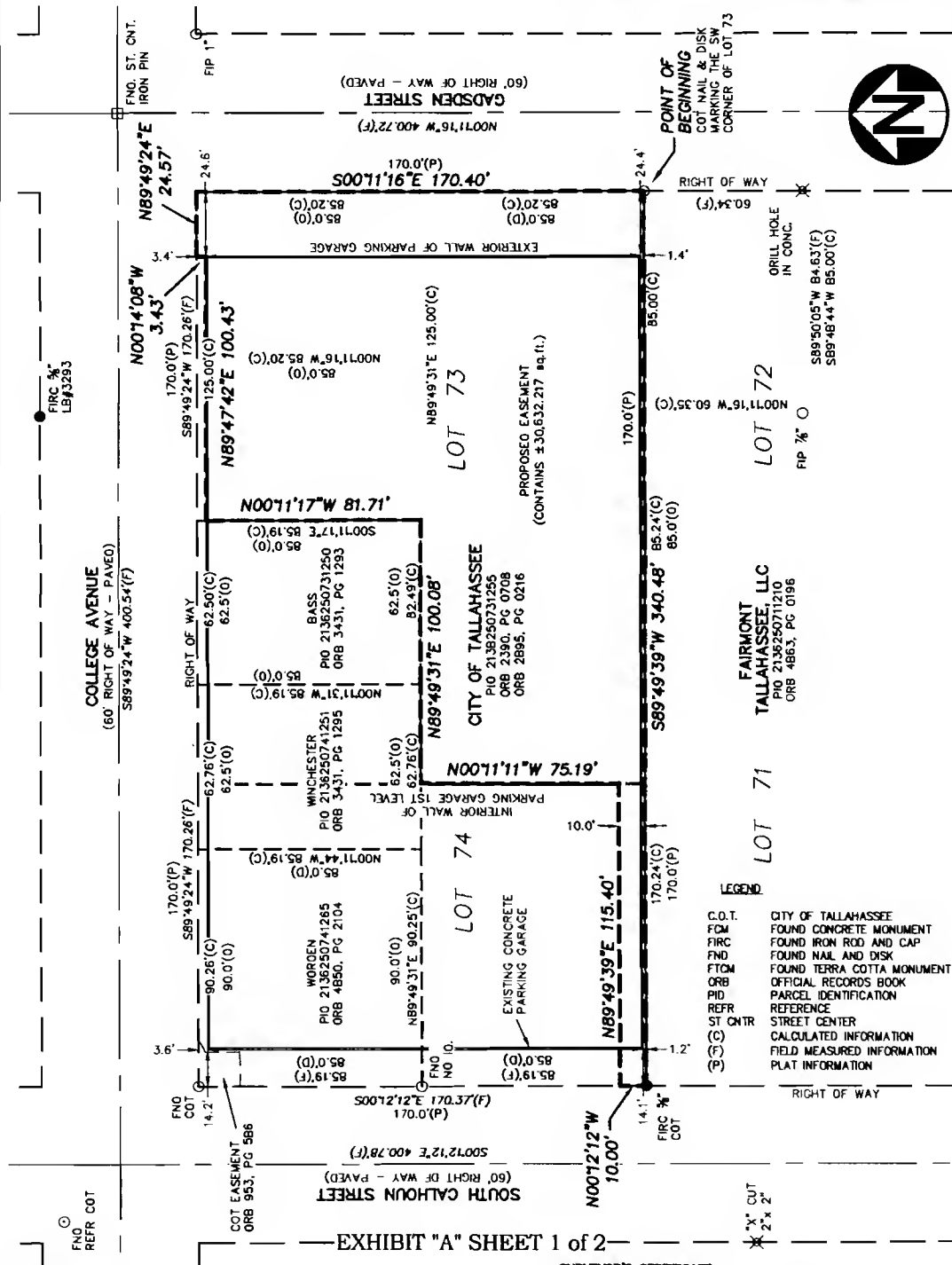
Exhibit "A"

SKETCH OF DESCRIPTION FOR FAIRMONT TALLAHASSEE, LLC OF INGRESS/EGRESS EASEMENT



NCG
NOBLES CONSULTING GROUP, INC.

2844 PABLO AVENUE, TALLAHASSEE, FLORIDA, 32308
LB#3293 PH: 850-385-1178 FAX: 850-385-1404 WWW.NCGINC.COM EB#7890



SURVEYOR'S NOTES

- BEARINGS ARE BASED ON NAD 83 (2011) STATE PLANE COORDINATES, FLORIDA NORTH ZONE.
- THIS IS NOT A BOUNDARY SURVEY.

DATE: 02/15/2016
DRAWING: 5797-01 EASE
PROJECT No.: 5797-001
SURVEY DATE:
FIELD BOOK:
REVISION:

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS SKETCH MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 5J-17.051 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

Alfredo A. Bermudez, PSM
Florida Professional Surveyor & Mapper
Certificate No. 5578

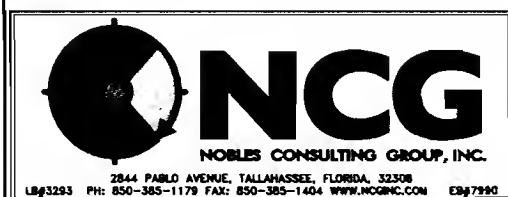
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SKETCH OF DESCRIPTION
FOR
FAIRMONT TALLAHASSEE, LLC
OF
INGRESS/EGRESS EASEMENT

LEGAL DESCRIPTION
INGRESS AND EGRESS EASEMENT

An Ingress and Egress easement over parts of Lot 73 and Lot 74 of the Official Plat of the City of Tallahassee, being more particularly described as follows:

BEGIN at a found nail and cap, City of Tallahassee marking the Southeast corner of Lot 73 of the Official Plat of The City of Tallahassee, and thence along the South boundary of said Lot 73 and the South boundary of Lot 74 run South 89 degrees 49 minutes 39 seconds West, a distance of 340.48 feet to a found 5/8" iron rod and cap, City of Tallahassee, and the East right of way South Calhoun Street, a 60-foot right of way; thence along said right of way run North 00 degrees 12 minutes 12 seconds West, a distance of 10.00 feet; thence leaving said right of way run North 89 degrees 49 minutes 39 seconds East, a distance of 115.40 feet to a point on the interior wall of the 1st Level of the existing concrete parking garage; thence along said interior wall run North 00 degrees 11 minutes 11 seconds West, a distance of 75.19 feet to a point on the South boundary of that parcel described in Official Records Book 3431, Page 1295 of the Public Records of Leon County, Florida; thence leaving said interior wall along the South boundary of said parcel and the South boundary of that parcel described in Official Records Book 3431, Page 1293 of the Public Records of Leon County, Florida, run North 89 degrees 49 minutes 31 seconds East, a distance of 100.08 feet; thence along the East boundary of said parcel described in Official Records Book 3431, Page 1293 of the Public Records of Leon County, Florida, run North 00 degrees 11 minutes 17 seconds West, a distance of 81.71 feet to a point on the interior wall of said concrete parking garage; thence along said interior wall run North 89 degrees 47 minutes 42 seconds East, a distance of 100.43 feet to a point on the exterior wall of said concrete parking garage; thence along said exterior wall and extension thereof run North 00 degrees 14 minutes 08 seconds West, a distance of 3.43 feet to a point on the South right of way of College Avenue, a 60-foot right of way; thence along said South right of way run North 89 degrees 49 minutes 24 seconds East, a distance of 24.57 feet to the Northeast corner of said Lot 73 and the West right of way of Gadsden Street, a 60-foot right of way; Thence along said West right of way run South 00 degrees 11 minutes 16 seconds East, a distance of 170.40 feet to the POINT OF BEGINNING. The above described easement contains 30,632.217 square feet more or less.



DATE:	02/15/2016
DRAWING:	5797-01 EASE1
PROJECT No.:	5797-001
SURVEY DATE:	
FIELD BOOK:	
REVISION:	



Agenda Item Details

Meeting	Mar 21, 2018 - City Commission Meeting & Summary
Category	13. POLICY FORMATION AND DIRECTION
Subject	13.04 Discussions on Eastside Parking Garage---Judy Donahoe, Real Estate Management
Type	Action, Discussion
Fiscal Impact	Yes
Dollar Amount	400,000.00
Budgeted	Yes
Budget Source	An approximate \$400,000 will need to be expended on work to assure the stability of the garage. As this is an emergency expenditure, staff is recommending the use of the Deficiencies Fund. The required policy level amount for the Deficiencies Fund (two months' worth of General Fund expenditure for the ensuing fiscal year's expected operating budget) is \$25.5 million. Currently, the Deficiencies Fund has a balance of \$26.9 million. At a later date, staff will make a recommendation regarding reimbursement of the Deficiencies Fund through options such as the internal loan pool or bond funding. The City Attorney's Office and Resource Management have reviewed this item and concur that it meets City guidelines. The City will continue to pay rent based upon the payment structure in the lease agreements.
Recommended Action	<p>Recommended Action</p> <p>Option 1 - Direct staff to negotiate a purchase with the owners of the three leased properties and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.</p> <p>Alternate Recommended Action</p> <p>Option 2 - Direct staff to exercise the option to negotiate the land leases for an additional 18 years instead of the 25 years stated in the lease and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.</p>

For more information, please contact: Judy Donahoe, Real Estate Management, (850) 891-8711.

Statement of Issue

The City's Eastside parking garage is located at 215 South Calhoun Street and consists of 768 parking spaces divided among six parking levels located upon 1.33 acres. Of these 768 spaces, 666 are devoted to public parking either on a monthly lease basis or as hourly transient parking. Approximately 0.41 acres of the garage's site, or three lots in the northwest corner of the site, is leased to the City of Tallahassee through two long-term ground leases, which are set to expire in seven years or June 30, 2025, as depicted on Attachment #1. The City has committed to maintain public parking at the current garage location. However, there are several issues affecting the future of the Eastside garage including:

- A 2017 Structural Investigation and Evaluation of the garage indicated substantial needed repairs, including several issues described as structurally critical;
- The owners of the leased property may not renegotiate the 25-year lease extension option to terms favorable to the

City;

- The owners of the leased property may not have any interest in selling their respective 0.41 acres at market value to the City;
- The current ground leases will not allow the City to demolish and rebuild the garage structure without the lessors' permission or the City elects to pursue legal action;
- The City is obligated to continue making ground lease payments through the term of the lease agreements regardless of the condition or demolition of the garage;
- Fairmont Tallahassee, LLC is planning on starting construction on a multi-story hotel named Washington Square on the lot immediately adjacent to the south.

This agenda item seeks Commission direction on the future of the Eastside parking garage.

Recommended Action

Option 1 - Direct staff to negotiate a purchase with the owners of the three leased properties and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.

Alternate Recommended Action

Option 2 - Direct staff to exercise the option to negotiate the land leases for an additional 18 years instead of the 25 years stated in the lease and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.

Fiscal Impact

An approximate \$400,000 will need to be expended on work to assure the stability of the garage. As this is an emergency expenditure, staff is recommending the use of the Deficiencies Fund. The required policy level amount for the Deficiencies Fund (two months' worth of General Fund expenditure for the ensuing fiscal year's expected operating budget) is \$25.5 million. Currently, the Deficiencies Fund has a balance of \$26.9 million. At a later date, staff will make a recommendation regarding reimbursement of the Deficiencies Fund through options such as the internal loan pool or bond funding. The City Attorney's Office and Resource Management have reviewed this item and concur that it meets City guidelines. The City will continue to pay rent based upon the payment structure in the lease agreements.

Supplemental Material/Issue Analysis

History/Facts & Issues

The City's Eastside parking garage is located at 215 South Calhoun Street and consists of 768 parking spaces divided among six parking levels located upon 1.33 acres. Of the 768 parking spaces, 666 are available for public parking. The City has fee ownership of approximately 70% of the land upon which the Eastside garage is constructed. The remaining 30% (approximately 0.41 acres) consists of three privately-owned lots, which are leased to the City on two long-term ground leases.

Fairmont Tallahassee, LLC (Fairmont) has a perpetual, exclusive right of use for the first floor of the Eastside garage (less an area in the northwest corner used by the Downtown Improvement Authority for storage) and anticipates continuing this arrangement if there is a new garage built to replace the Eastside garage. There are 102 potential parking spaces on this level, however, because these spaces were very infrequently used and were not accessible from the other floors of the garage, the decision was made to enter into an easement agreement with Fairmont for their use.

Structural Concerns

In 2003, Rosenbaum Engineering, Inc. was retained by the City to perform a visual observation of Eastside garage for the purpose of assessing its general structural condition. This assessment resulted in a number of repair and maintenance projects to upgrade the condition of the structure including recoating the structural steel frame, installation of a crack-sealing coating on the upper floor, ramps at several entrances to the facility, and modifications and upgrades of the

expansion joints across the garage's structure and ramps.

In 2017, Rosenbaum Engineering was again retained to assess the condition of Eastside garage. The resulting Structural Investigation and Evaluation report indicated significant structural concerns, including some issues described as structurally critical, and included recommendations for repairs necessary to extend the life of the facility. The engineer recommended an expenditure of \$1,308,500 over the next two years to address the most critical and severe issues plus an additional \$2,491,500 (plus escalation and contingency factor) over a period of two decades. In subsequent conversations, Mr. Rosenbaum indicated that even with this substantial expenditure, the garage facility could be nearing the end of its economic life in approximately 25 years.

It is Mr. Rosenbaum's professional opinion that the City should expend approximately \$400,000 of the above-mentioned \$1,308,500 to assure the integrity and stability of the garage before and during the Washington Square construction, which includes some repairs that could not be completed without the nearby excavation such as a waterproofing of the subsurface southern wall.

City's Financial Obligations

The City is obligated to make additional lease payments totaling \$1,219,185.79 from March of 2018 through June 30, 2025. The City currently pays \$12,709.24 per month for the ground leases with the lease rate increasing 5% every two years. The next increase is scheduled to occur on July 1, 2018, when the lease rate increases to \$13,344.69 per month. To date, the City has made lease payments totaling \$1,830,222.46 over the last 18 years for the use of the three privately-owned lots.

The ground leases are set to expire in seven years (June 30, 2025), and the leases have an option to extend the lease term for an additional 25 years. Considering the age of the facility, its needed repairs and the ground rental expenses, staff has notified the property owners that the City may not continue the ground leases beyond the 2025 expiration date unless directed to do so by the City Commission. Given the needed repairs and the request from Fairmont for a joint effort to construct a new garage (as provided below), staff has been in discussions with the property owners to discuss a potential purchase of the three parcels (subject to the ground leases). Staff made an offer to purchase the property utilizing the greater of the scheduled lease amounts or the market value of the property, which was not accepted or counter-offered by the property owners' representative.

Fairmont Tallahassee, LLC's Proposal

Attachment #1 illustrates the configuration of the structure. Staff has been made aware over time that Leon County Courts and Leon County have been seeking additional parking closer to their facilities. In addition, the recently renovated Jim Moran Institute and the Ballard Office/Restaurant development will create additional demands for parking. City staff have also met with Fairmont, which owns the one-half block located south of and adjacent to Eastside garage. Fairmont is undertaking an estimated \$90 million development of its parcel, which will be located immediately south of Eastside garage. This development, known as Washington Square, will consist of a mixed-use building containing office space, a full-service hotel under the Loews banner and multiple restaurants along with a structured 425 space parking garage. Fairmont has proposed to the City reconstructing a new Eastside garage simultaneously and in coordination with the adjacent Washington Square development, as possibly being beneficial to both the City and Fairmont in terms of cooperative design and planning as well as shared construction, management and demolition in a public/private partnership (P3). Depending upon the use of a 5' strip of Fairmont's land, the City's land and the three parcels leased to the City, a range of 570 to 1100 parking spaces could be constructed, as depicted on Attachment #2.

Discussions with Fairmont, as well as the structural analysis that had already been commissioned by the City, has led staff to consider various options regarding the future of the Eastside garage.

Options

Staff have identified five possible options regarding the Eastside Garage.

Recommended Action

1. **Direct staff to negotiate a purchase with the owners of the three leased properties and expend approximately \$400,000 in immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.** This option continues the operation of the garage with the existing number of parking spaces. The repairs will assure the integrity and stability of the garage during construction of the hotel. This expenditure will also allow for repairs that could not be completed without excavation of the site. Negotiations would be predicated upon reaching a sales price that would assure a continued positive net revenue over the estimated remaining physical life of approximately 25 years. Staff would continue to seek revenue sources at appropriate time intervals to continue the rehabilitation of the Eastside garage.

Alternate Recommended Action

2. **Direct staff to exercise the option to negotiate the land leases for an additional 18 years instead of the 25 years stated in the lease and expend approximately \$400,000 in immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.** This option continues the operation of the garage and maintains the 768 spaces through 2043. A City investment of \$3,800,000 (at today's cost) will be necessary to maintain the structural integrity of the structure. This work will be staggered over the life span of the garage. This option is considered to be viable if a renegotiation of the leases is successful. Mr. Rosenbaum believes there is reason to continue investing in the repairs and upkeep in the garage for at least another 20 years, so staff has estimated a useful life of another 25 years. This option delays the demolition until 2043 and positive cash flows are anticipated except in the three targeted years of repair expenses. Staff would continue to seek Commission funding to continue the scheduled repairs over the lifetime of the garage.

3. **Direct staff to continue utilizing the City property and the leased properties through 2025.** This option maintains the 768 spaces through 2025. An additional minimum City investment of \$1,308,500 will be necessary to maintain the structural integrity of the structure. An approximate \$400,000 of the \$1,308,500 should be spent on work occurring prior to construction of the Washington Square development. This option allows the City time to systematically arrange relocation and cancellation of existing monthly parking leases and set aside the \$1,000,000 to \$1,500,000 needed to possibly demolish the garage after the leases terminate in 2025. The garage consistently nets approximately \$500,000 per year; after the \$1,308,500 capital expense, there is still a positive cash flow of \$2,191,500 to the City over the remaining 7 years of the leases.

4. **Direct staff to issue a Request for Proposals (RFP) for a P3 to construct a new parking garage.** This option allows proposers to bring the City options that may include the City property, the City property plus the leased property or a 5' strip from the abutting property. Proposals would be ranked based upon financial feasibility, control and delivery of the real property, ability to obtain permission from the leaseholders to demolish the existing garage, timing and benefit to the public. The terms of the RFP would require public parking commensurate with existing public parking spaces (666) and the City would retain ownership of these spaces by condominium.

5. **Direct staff to prepare a RFP sell the Eastside garage.** The recent appraised value for the garage is \$3.4 million dollars based upon the remaining terms of the leases. The City would remove itself from the repair costs, the lease payments, and the eventual demolition and rebuild of the structure. The sale is subject to the terms and conditions of the two ground leases. The concern of this option is the assurance of continued public parking. If this option is approved by the Commission, staff would issue a RFP requiring the owners to construct a new parking garage reserving at least the existing number of public parking spaces (666) for public use. This allows the City to continue to provide public parking at competitive rates upon default.

Summary

There continues to be a need for public parking in the downtown. There are issues associated with all feasible options, but staff believes the five options presented herein represent the most viable alternatives.

Options

Recommended Action

1. Direct staff to negotiate a purchase with the owners of the three leased properties and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.

Pros:

- Allows for the continued operation of the garage.
- Maintains the existing 768 spaces that can be used for public parking.
- Allows the City to continue to receive a positive cash flow of up to \$500,000 per year net revenues.
- No disruption to current monthly parking leases.

Cons:

- The City must immediately expend \$400,000 to assure structural integrity during construction of Washington Square.
- A structural engineering report indicates \$1,308,500 in needed repairs to continue the operation of the garage until the end of the current lease term. This will impact the net revenues for the years expended.

Alternate Recommended Action

2. Direct staff to continue utilizing the City property and exercise the options to negotiate the land leases for an additional 18 years instead of the 25 years stated in the lease and expend approximately \$400,000 for immediate repairs to assure the stability of the Eastside garage during construction of Washington Square.

Pros:

- Allows for the continued operation of the garage.
- Maintains the existing 768 spaces that can be used for public parking.
- Allows the City to continue to receive a positive cash flow of up to \$500,000 per year net revenues.
- No disruption to current monthly parking leases.

Cons:

- Will lose any cost efficiencies that may be realized through a P3 agreement.
- A structural engineering report indicates \$3,800,000 in needed repairs to continue the operation of the garage until the end of the extended lease term. This will impact the net revenues for the years expended.

3. Direct staff to continue utilizing the City property and the leased properties through 2025.

Pros:

- Allows for the continued operation of the garage through 2025.
- Maintains the existing 768 spaces that can be used for public parking.
- Gives the City flexibility to explore other options while reserving funds for the demolition of the Eastside garage.
- Allows the City to continue to receive a positive cash flow of up to \$500,000 per year net revenues until the time of demolition.
- Will allow the City to systematically arrange relocation and cancellation of parking leases with the City's parking tenants at the end of the lease term in 2025.

Cons:

- Will lose any possible cost efficiencies that may be realized through a P3 agreement.

- A structural engineering report indicates \$1,308,500 in needed repairs to continue the operation of the garage until the end of the current lease term. This will impact the net revenues for the years expended.

4. Direct staff to issue a RFP for a P3 to construct a new parking garage.

Pros:

- Gives the City flexibility in design to maximize parking spaces and efficiency.
- Provides additional public parking.
- May provide an innovative funding approach for a new garage.

Cons:

- Staff has been advised that the owners of leased parcels may not wish to sell and demolition requires their approval or a court action in favor of the City.
- May not be cost effective.
- May not coincide with Washington Square construction.
- Will require relocation of existing monthly parking renters during the construction period.

5. Direct staff to prepare a RFP to sell the Eastside garage.

Pro:

- City will realize an estimated \$3.4 million and will not be responsible for undertaking short term needed repairs, eventual demolition and construction while preserving public parking.

Cons:

- City would be responsible for ground lease payments if new owner did not buy out leases and ultimately defaulted on payments.
- Demolition is conditioned upon approval by the land lease owners or a court action in favor of the City.
- Would require performance bond and reversion clause to protect City interests during demolition and construction.

6. Provide alternative direction to staff.

Attachments/References

1. Eastside Garage Location Map
2. Massing Exhibits – Existing Garage
3. Massing Exhibits – Proposed Garage

[Eastside Map.pdf \(309 KB\)](#)

[Massing Exhibits Existing Garage.pdf \(551 KB\)](#)

[Massing Exhibits Proposed Garage.pdf \(2,153 KB\)](#)

From: **Walter Hall** walter@fairmontdevelopmentllc.com
Subject: Re: Eastside Garage
Date: July 13, 2019 at 2:29 PM
To: Wayne Tedder Wayne.Tedder@talgov.com
Cc: Goad, Reese Reese.Goad@talgov.com

Gentlemen,

Good morning. Please see comments in red below:

I'd like to add additional background to the city garage sale. Fairmont made an attempt to purchase the garage, but the real estate appraisal conducted on behalf of the city was seriously flawed. The garage was appraised at \$3,400,000 in December 2017. At the direction of Judy Donahoe, Mr. Johnson reduced the structural repair requirements to "critical" and deducted just \$1,045,000. Most serious was omitting the Fairmont easement granted in 2016, he inserted in inaccurate parcel survey. Mr. John inaccurately valued the parcel after the demolition of the garage not taking into account future developments for the site with the ground-lease parcels remaining. Ignoring all the facts and assumptions, no investor would spend \$3.4 m for a parcel that would lose its revenue stream in seven years, the net profit wouldn't be sufficient.

Related to the garage discussion, in the March 21, 2018 city commission and during the garage presentation, Judy said she made an offer to the ground-lease parcel owners. I met with the attorney representing the 18+ ground-lease owners the following day, he told me Judy (the city) didn't make an offer(s) to purchase their land. During a meeting with the group Judy described the process how the city would value the parcels, no specific detail. I'm friends with one of the parcel owner families and he confirmed what their attorney told me. No formal offer was received. Learning this, and with the issues with the garage appraisal, we immediately withdrew our interest in working with the city to purchase the garage.

While conducting our due diligence to development Washington Square, I read past reports and news stories about the need for more public parking in the downtown district. This continues today with the city seeking additional parking in other parts of the city. We built our development partially because of the adjacent parking garage, in the easement presentation to the city commission, the economic benefit the city garage would receive was part of the consideration for granting the easement. During our independent appraisal of the city garage air rights, our appraiser identified the highest and best use of the city parcel is parking. I'm aware of about \$40k in critical repairs have been made to the city garage and the \$400k approved last March have yet to be made. To protect our financial interest, Fairmont hired an engineer to inspect the garage, they confirmed the damage/condition, but had a different repair schedule. I'm afraid running-out the clock in making the recommended garage repairs is not a good decision, in fact, the delay is causing additional damage according to our structural engineer. With all this being said, and under the current circumstances that came to light this week, Fairmont is interested in purchasing the garage if there is a fair and independent market appraisal. This option eliminates all of our concerns.....

Fairmont cannot accept what is proposed below. Unfortunately, we cannot re-start construction without a letter from the city acknowledging our easement is valid as written and recorded. Moving forward would be committing fraud with our lender and investors because of the clear intent of the city to challenge our easement.

Best regards,
Walter

Walter Hall
Principal

FAIRMONT DEVELOPMENT LLC
P.O. Box 10092
Tallahassee, FL 32302
(O) 888.571.7971 | (C) 321.332.4144
walter@fairmontdevelopmentllc.com

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Eastsid...old.pdf

On Jul 12, 2019, at 5:57 PM, Tedder, Wayne <Wayne.Tedder@talgov.com> wrote:

Walter,

1082
Exhibit D

I wanted to follow up with you regarding our conversation yesterday. The easement is for ingress/egress, storage, use and parking purposes within the existing garage. As you have been aware since you have considered the purchase of the garage, significant expenditures will be needed in the future to continue the structural viability of the garage. The parking garage may be required to be demolished and redeveloped in the future. Such improvements can not hinder our ability to demolish or repair the garage or redevelop the site over time. We are aware of the garage issues and sought solutions with the city to help resolve. We also discussed what would happen in the event is reconstructed, please refer to the March 21, 2018 city commission meeting agenda, this would be addressed between the city and Fairmont.

I want to share the option that I proposed to yesterday that provides you assurance and clarification of the easement area if or when the City's garage is demolished and redeveloped.

1. We ensure that you have permanent access/egress to your facility should the garage be demolished and/or the site is redeveloped.
2. Should the City's property be redeveloped, the City will seek to jointly share the improvements that you plan to construct. The loading dock is too small to share with another building. Our 19-story building is nearly 600,000 s.f. Should another dock be constructed we would lose valuable back-of-house area and employee parking.
3. If the site is redeveloped and the proposed Washington Square improvements conflict with the City's redevelopment plans, the City will develop plans that will have a mutual agreement with Washington Square. I appreciate this approach, but commissioners and city staff change, we cannot burden our owners with this uncertainty.

I hope this provides you the clarity that you need. Please let me know if you have any questions.

Thanks,

Wayne Tedder, AICP
Assistant City Manager
City of Tallahassee
(w) 850-891-8328 | (c) 850-567-4328

242



OFFICE OF THE CITY ATTORNEY

September 25, 2018

Elizabeth Barron, Esq.
Ausley McMullen
123 S. Calhoun Street
Tallahassee, FL 32301

Re: Fairmont Tallahassee's Proposal Regarding the Eastside Garage

Dear Ms. Barron:

The City of Tallahassee (City) is in receipt of Fairmont Tallahassee, LLC's (Fairmont) Memorandum dated September 20, 2018. The memorandum makes several proposals, which the City will address herein, as well as offer additional proposals to ensure continuing clarity and transparency between the parties.

FAIRMONT'S PROPOSALS

The memorandum proposes a net payment of \$217,000 for the sale of 10' of air rights from the City to Fairmont and the granting of a 5'1" easement to the City from Fairmont. Generally, this proposal is amenable to the City providing other issues discussed herein are resolved.

The tie-back shoring document will be granted and is currently being circulated for City signature.

At this time, the City does not wish to enter into further discussions or negotiations regarding a sale of the Eastside Garage. This topic has been discussed, and rejected several times, and the City Commission did not grant approval to continue discussions regarding selling the Eastside Garage.

The City agrees the following specific activities constitute back of house operations consistent with the parties' intent in the 2016 Easement: storing equipment, loading and unloading materials through existing ingress/egress, and directing employee activity. However, the City does not approve the placement of the generator in the Eastside Garage as a back of house activity. The additional ingress/egress access point at the south side of the Eastside Garage is under review.

Additionally, the City's appraisal of the no-build easement did in fact address the 2016 Eastside Garage first floor easement from the City to Fairmont, but did not consider it to have any relevance to the valuation of the air rights above the sixth floor of the garage.

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ANDREW D. GILLUM
MAYOR

REESE GOAD
INTERIM CITY MANAGER

NANCY MILLER
COMMISSIONER

JAMES O. COOKE, IV
CITY TREASURER-CLERK

CURTIS RICHARDSON
COMMISSIONER

CASSANDRA K. JACKSON
CITY ATTORNEY

SCOTT MADDOX
COMMISSIONER

JOSEPH MALESZEWSKI
CITY AUDITOR

GIL D. ZIEFFER
COMMISSIONER

Exhibit E

CITY'S PROPOSALS

First, the City proposes that the 2016 easement be amended to clarify the parties' intentions and future use of the 2016 easement area. The City Commission's approval of the easement clearly stated the intent was to encourage economic vitality by allowing Fairmont the use of an underutilized, functionally obsolete asset, i.e. the first floor of the Eastside garage. Obviously, the City will neither intentionally rebuild a replica of the Eastside with inherent functional inadequacies nor allow the first floor to remain if the rest of the garage is demolished (as stated in Fairmont's appraisal of the sale of 10' air rights). If these scenarios had been the intent of the parties at that time, the City would have sought compensation for the loss of present, and future, rights.

Also, the City further proposes the amended 2016 easement to specifically state the City's right to enter the first floor of the Eastside garage to conduct repairs and maintenance, as needed.

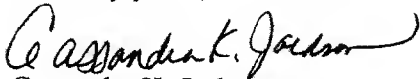
All further improvements to the garage will be submitted to the City for approval prior to submission of plans to Growth Management.

The term of the easement should be clarified. When the garage is demolished (which could be as early as 2025 if the NW corner ground leases are not renewed) and Fairmont wishes to permanently encumber the first floor of a new parking garage, the City would agree to a shared use and access easement for both parties' benefit and Fairmont will compensate the City based upon a fair market value appraisal at the time of easement execution. If, however, the City decides not to rebuild and sell the site as vacant land for development, an affirmative duty of the City to negotiate an easement with Fairmont for a future garage will not exist.

Secondly, the City is interested in discussing options with Fairmont regarding completion of necessary repairs to the Eastside Garage, subject to all applicable City policies. The future agenda item to the City Commission seeking approval to sell Fairmont the 10' of air rights, referenced above, and Fairmont's grant of easement to the City for the ingress/egress/drainage easement could include an option to negotiate with Fairmont to conduct the needed repairs as a partial offset to the payment of \$217,000 due to the City for the value of the 10' air rights.

Thank you for your consideration of the proposals discussed herein. The City awaits a response at your earliest convenience. Please feel free to contact Kristen McRae in my office with any response.

Sincerely yours,



Cassandra K. Jackson
City Attorney

cc: Wayne Tedder
Judy Donahoe
Kristen McRae

From: Ken McDermott ken@fairmontdevelopmentllc.com
Subject: Re: Follow-up
Date: November 2, 2018 at 4:38 PM
To: Elizabeth Barron EBarron@ausley.com
Cc: Walter Hall walter@fairmontdevelopmentllc.com

Hi Elizabeth,

Thanks for your note.

Wayne told Walt that Karen is the contact person going forward. Based on this, we believe there will not be a need for legal council at future meetings.

We appreciate your offer to assist in a transition to another attorney and will call if that need arises.
Best regards,

Ken McDermott, Fairmont Development, LLC

On Nov 2, 2018, at 10:18 AM, Elizabeth Barron <EBarron@ausley.com> wrote:

Ken,

In following up on our conversation the other day in which we discussed that we believe it is best that you obtain other counsel moving forward, I wanted to see if you had made contact with another lawyer. I realize the Monday meeting with the City is right around the corner. I am happy to stay involved to get you through that meeting. And again, my offer to assist with the transition still stands. Please let me know (1) whether I should plan to attend the Monday meeting and (2) whether I should go ahead and indicate to the City attorney and staff that I should not be included on emails or (3) if there is anything that needs to be done in advance of the meeting.

Best regards,

EB

Elizabeth D. Barron
Ausley McMullen
123 S. Calhoun St.
Tallahassee, FL 32301
(850) 425-5423 phone
(850) 222-7560 fax

11
Exhibit F

From: Donahoe, Judy Judy.Donahoe@talgov.com

Subject: Loading Dock Plan Review

Date: July 9, 2019 at 11:01 AM

To: walter@fairmontdevelopmentllc.com

Cc: Jumonville, Karen Karen.Jumonville@talgov.com, Tedder, Wayne Wayne.Tedder@talgov.com, Jackson, Cassandra Cassandra.Jackson@talgov.com, McRae, Kristen Kristen.McRae@talgov.com, Tredik, Bob Bob.Tredik@talgov.com

1062
Exhibit G

Walter,

I have reviewed the submitted plans for the loading dock at the Eastside Garage and discussed same with Wayne, Cassandra and Kristen. The loading dock is approved from a Real Estate Management perspective, however, we wish to restate the City's position regarding the easement interest written by the City Attorney's Office that was presented to you as part of emails to you on 5/16/18, 5/23/18 and 9/6/18:

It is the City's position, the easement is written for, and applies only to, the current first floor of the Eastside garage as depicted in Exhibit "A." The City's intention when entering into the easement was that the term "perpetual" is defined by the specific location within the first floor of the Eastside garage, as depicted on Exhibit "A", and the easement would extinguish if that first floor of the garage is removed. The City would not have agreed to the easement if the intent was for perpetuity beyond the current garage lifespan. In fact, if the intent was for the easement to exist beyond the current garage's lifespan, the easement, and exhibit, would have clearly stated that intent and the City would have sought substantial compensation for such an interest to be granted. As you recall, the easement was granted to Fairmont without compensation to the City since, in the garage's current configuration, the first floor was not revenue generating for the City, and was not a cohesive part of the current garage. These were pertinent facts presented in the agenda item to the City Commission. Any difference of opinion in the easement's intent should probably be addressed now.

The City has not entered into a continued leasehold with the owners of the three lots at the NW corner of the Eastside Garage, so it is possible the garage will be demolished at the conclusion of the ground leases in 2025. Fairmont will be responsible for removal of all permanent and temporary improvements unless there is an agreement to continue a mutually advantageous use of the loading dock, etc. within the scope of future project either with the City or a purchaser of the City's land.

Growth Management advised me there were still submissions pending that need to be received and approved prior to the issuance of the permit. Please coordinate outstanding items with Karen Jumonville and Bob Tredik.

Please let me know if you have any questions.

Thanks,

Judy Donahoe
Director Real Estate
City of Tallahassee
300 S. Adams St., Box A-15
Tallahassee, FL 32301
(850) 891-8524 office
judy.donahoe@talgov.com

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